

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Notice of Proposed Rulemaking)	
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Appropriate Regulatory Treatment for)	CS Docket No. 02-52
Broadband Access to the Internet Over)	
Cable Facilities)	
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COMMENTS OF THE CITY OF SOUTH PORTLAND, MAINE

These comments are filed by the City of South Portland in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of South Portland believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

South Portland is a City of approximately 25,000. It is served by Time Warner Cable of Maine, which has approximately 7,800 subscribers. The cable system serving our community offers subscribers a full range of analog and digital cable channels operating on a Fiber Optic system. Cable modem service is offered in our community.

2. Our franchise and cable modem service.

Our franchise was issued in 1994 and did not directly address cable modem service. However, under our franchise the definition of gross revenues is broad enough to include cable modem service. Section 15, Gross Revenue, states that "Within ninety (90) days following the close of each fiscal year of the Company during which

any revenues are received by the Company from subscribers within the City, the Company shall file with the City Manager an Annual Statement showing all gross revenues received by the Company during each such fiscal year from such subscribers. Such Statement shall show on a monthly basis for gross receipts from such subscribers for each category and classification (the) charges and fees permitted under this Franchise.” Pursuant to that provision, we were entitled to receive franchise fees on cable modem service. We received \$70,560.00 in cable modem franchise fees in 2001. These payments on gross revenues were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, as long as the operator complied with the franchise terms. Based on the increases we have seen in the last two years, we estimate that we will lose at least \$90,000.00 each year over the term of the Franchise if we cannot charge a fee on revenues from cable modem service.

Neither the franchise requirements or the fees have prevented or delayed the roll-out of cable modem service in our community.

3. How we regulate cable modem service.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- When we get complaints about promotional practices, the complaint may apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is also subject to the following requirements under our franchise:

- the operator is required to provide all services throughout its service area, and is prohibited from redlining.
- the operator is prohibited from discriminating against potential customers.
- the operator is prohibited from demanding exclusive contracts as a condition of providing service to MDUs and others.

4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. For example, the funds that we receive from cable modem services are used in part to offset the expense of operating the city web site which provides city services to those with internet access. Also, our budget for next year also included a full time position at the High School for the purpose of managing our Educational Access channel. That proposed position had to be eliminated as a direct result of the FCC decision. The funds that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, promote broadband deployment, and support Educational Access Television in our community.

Respectfully submitted,

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